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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

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Federal-State Joint Board
on Universal Service

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CC Docket No. 96-45

**Communications Workers of America
Comments on Joint Board Recommendation**

Dated: January 9, 1997

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I. Introduction and Summary

The Joint Board's Recommended Decision is designed to balance the universal service goals of the Telecommunications Act of 1996 (the "Act") with a competitive framework. Competition makes the system of implicit subsidies that supported universal service in a monopoly environment untenable. The Act requires the Commission, with the advice of the Joint Board, to create a new framework of explicit support mechanisms to replace the implicit subsidies that supported universal service in the monopoly environment.

Balancing the goals of universal service and competition requires a system of universal service support that is sufficient to recover lost implicit subsidies. Should carriers receive insufficient support to cover the costs of providing universal service, they will seek to recover revenues by raising local prices (where state regulators permit), by reducing variable costs through a reduction in investment and employment, or by a combination of these strategies.

Each of these strategies would undermine the goals of the Act. Local rate increases will shift the burden of support onto those least able to pay, thereby undermining universal service. Reduction in network investment and employment will lead to deteriorating service quality and delay the introduction of advanced telecommunications services into all regions and all communities.

To ensure a universal support mechanism that is sufficient, equitable, nondiscriminatory, and competitively neutral, CWA provides the following comments on the Joint Board's recommendations:

- * The Commission should adopt service quality standards to meet the Act's mandate for quality services.
- * Contributions to universal service support should be based on inter- and intrastate retail revenues by all telecommunications providers, including Internet Service Providers.
- * Calculation of cost for high cost support should be based on actual cost with a transition mechanism to permit recovery of embedded costs.
- * The nationwide revenue benchmark should be based on basic local exchange revenue.
- * Service areas should be small in scope to permit efficient targeting of support.

To ensure competitive neutrality in universal service support, the Commission must ensure that all carriers receiving support adhere to symmetrical legal obligations and labor standards. The Commission should ensure that telecommunications carriers that violate the law by denying employees their legal right to collective organization are not be eligible for universal service support. This policy would ensure competitive neutrality by ensuring that no telecommunications carrier achieves competitive advantage by artificially suppressing its labor costs. Furthermore, this policy would promote the Act's goal to spur growth of good jobs in the telecommunications industry.

The Commission should also require eligible carriers to meet carrier-of-last-resort obligations.

CWA strongly supports the Joint Board's recommendations regarding discounts to schools and libraries as a mechanism to meet the Act's mandate to provide universal access to advanced telecommunications services.

CWA also supports the Joint Board's recommendations regarding toll limitation for Lifeline customers and that the Subscriber Line Charge not be increased.

The task before the Commission in this proceeding and in the access reform proceeding is to provide sufficient explicit support to preserve and promote universal service. In light of pricing decisions in the Interconnection Order, this task is even more challenging.

II. The Joint Board's Definition of Universal Service Should be Expanded to Include Additional Services and Quality Standards.

A. The Joint Board's Definition of Universal Service Should be Expanded to Include Additional Services.

CWA concurs with the Joint Board's recommendation of services to be included in universal service support,¹ with the following additions:

¹ Recommended Decision at Para. 65-67.

1. Directory Listings. Because all consumers benefit when directory listings include all telephone subscribers, directory listings should be included in the list of services receiving universal service support.

2. Access to operator services and directory assistance, *including initial contact with a live operator*. The Commission should add “initial contact with a live operator” to the list of services included in universal service support. Access to a live operator is indispensable for users in public health or public safety emergencies. A voice response system fails to meet this test.

3. Access to business office and repair bureau, including initial and prompt contact with customer service personnel. Prompt customer access to the repair bureau and business office appears to be a problem today. Thus, CWA believes that *prompt* access to repair bureaus and business offices should be added to the list of services that qualify for universal service support.

B. The Definition of Universal Service Should be Expanded to Include Provisions to Ensure that Carriers Provide “Quality Services.”

By refraining from recommending that the Commission require that eligible carriers meet specific service quality standards,² the Joint Board has failed to meet the Act's mandate that "quality services should be available at just, reasonable, and affordable rates."³

The Joint Board's recommendation that "states may adopt and enforce service quality rules, on a competitively neutral basis"⁴ does not go far enough to ensure the Act's mandate. Many states do not have quality standards, and among those that do, they do not have comprehensive standards. According to NARUC's 1992 compendium of state Telephone Service Quality Standards, 25 states at that time had no service standards on installation; 16 states had no standards on call completion and business office, repair bureau, directory assistance, and toll operator answer time; 27 states had no technical standards on transmission; and 17 states had no standards on trouble reports and clearing time. A more recent NARUC publication indicates that 7 additional state regulatory commissions have instituted at least some quality of service standards since 1992, bringing the total number of states with at least some service quality standards to 32 plus the District of Columbia.⁵ Among those states that do set standards, some do not make the data they collect available to the public.

² Recommended Decision at Para. 104.

³ 47 U.S.C. Section 254(b)(1).

⁴ Recommended Decision at Para 104.

⁵ National Regulatory Research Institute, *Telecommunications Service Quality*, March 1996.

The Commission is well aware that there have been many service quality complaints and penalties imposed over such problems in the states. Some telecommunications carriers that receive support from the Universal Service Fund (USF) have let service quality seriously deteriorate, despite the explicit subsidies that they receive for high cost support.

The decline in service quality is a result of a cost-cutting approach to competition. As the marketplace moves toward equilibrium, the Commission should indicate the quality level it seeks for consumers. This is necessary to comply with the Act's mandate for "quality services."

Moreover, the Commission has been involved in monitoring telecommunications carriers' service quality since 1969 when the Commission first imposed reporting requirements on quality indices. More recently, in 1993 the Commission created the Network Reliability Council, now called the Network Reliability and Interoperability Council, to develop and monitor compliance with technical standards.

Building on this history and consistent with the mandates of the Act, the Commission should establish federal performance-based service quality standards on which all telecommunications providers must report and for which they are accountable. In this proceeding, the Commission should mandate the establishment of a special task force or delegate the responsibility to the Network Reliability Council to develop comprehensive service quality standards. In an earlier

filing, CWA provided a list of recommended service quality issues for which federal standards should be established.⁶

The Commission should require all carriers that receive universal service support to meet the service quality standards in all four prior calendar quarters. Failure to meet quality standards should result in denial of universal service support; in addition, the carrier should be required to pay a penalty into the Universal Service Fund.

Furthermore, the Commission should impose the same data reporting requirements that it currently imposes on price cap LECs on all telecommunications carriers.⁷ Asymmetrical requirements for data reporting not only violate the principle of competitive neutrality, they also deprive the Commission and the public of data necessary to monitor compliance with the quality mandate of the Act.

Should the Commission adopt the Joint Board's recommendation to rely on state Commissions to monitor service quality, CWA supports SBC's position that the Commission should at a minimum require states to impose the same quality standards on competitive local exchange

⁶ Comments of the Communications Workers of America, CC Docket 96-45, April 12, 1996.

⁷ The Commission recently relaxed certain data reporting requirements imposed upon price cap local exchange carriers. This will make it more difficult for the Commission to monitor service quality of price cap LECs. The Commission should evaluate the impact of this change on compliance monitoring.

carriers that they have set for incumbent local exchange carriers.⁸ Such a position is consistent with the principle of competitive neutrality because it requires all carriers to meet the same regulatory standards. The Commission should also require states to make service quality reporting data available to the public to ensure public accountability.

III. Eligibility for Support

A. Carriers that Violate Labor Laws Should Not be Eligible for Universal Service Support.

To ensure competitive neutrality in universal service support, the Commission must ensure that all carriers receiving support adhere to symmetrical legal obligations and labor standards. The National Labor Relations Act (NLRA) guarantees all covered employees the right to self-organization and to bargain collectively to improve wages, benefits, and working conditions.⁹ The Commission should ensure that telecommunications carriers that violate the NLRA do not receive universal service support for the twelve-month period following NLRB decisions of a labor law violation.

This policy would ensure competitive neutrality by ensuring that no carrier artificially suppresses its labor costs through legal violation. In addition, it would ensure that explicit subsidies which

⁸ In its comments, SBC states: "The Commission should also promulgate rules that require all eligible carriers receiving support to meet certain, measurable quality standards as defined by the States. At the very least, the Commission should clearly determine that States, in their eligible carrier certification process, are free to adopt equitable, technologically-neutral, and non-discriminatory quality and affordability standards that must be met by the applying carrier." Comments of SBC Communications Inc. In Response to Public Notice of November 18, 1996, p. 21.

⁹ 29 U.S.C. Section 157.

are a result of public policy do not benefit carriers that break the law. Finally, it would promote the Act's goal of promoting competition to "secure quality services" and encouraging "the rapid deployment of new telecommunications technologies." It would ensure that competition is based on technology and service quality, not downward pressure on labor costs. It would promote one of the goals of the Act's proponents: to use competition to spur demand for new telecommunications services and thereby increase the growth of high-wage high-skill telecommunications jobs.

There is precedent for such a policy in other areas of federal regulation. Federal regulations governing the Head Start and the Job Training Partnership Act (JTPA) programs state that recipients of funds under the Act shall not use such funds to "assist, promote, or deter union organizing."¹⁰ Federal Medicare regulations prohibit use of federal dollars "directly related to influencing employees respecting unionization."¹¹

B. Only Carriers that Assume Carrier-of-Last-Resort Obligations Should be Eligible for Universal Service Support.

The Joint Board concluded that the Commission need not clarify statutory language regarding which carriers are eligible for universal support.¹² CWA agrees with the Joint Board's recommended decision that carriers that provide services solely through reselling should not be

¹⁰ 29 U.S.C. Section 1553(c)(1) and 42 U.S.C. Section 9839(e)

¹¹ 42 U.S.C. Section 1395x(v1N)

¹² Recommended Decision at Para. 155-160.

eligible for universal support.¹³ However, CWA also believes that the Joint Board should clarify statutory language by requiring that eligible carriers meet carrier-of-last-resort (COLR) obligations.

Such a requirement is necessary to ensure the availability of quality services at an affordable price. Absent such a requirement, carriers are free to cream skim only high volume customers. This in turn increases the burden on carriers with COLR obligations and their remaining low volume customers.

Furthermore, such a requirement is necessary to ensure competitive neutrality. Carriers with COLR obligations are required to assume the investment risk of building and maintaining facilities in high cost areas. They incur the actual costs of building and maintaining these networks. Other carriers do not have to assume this investment risk and are free to choose whether or not to serve high cost areas. In effect, they are free to cream skim by service area, choosing to serve high-cost areas with high-value customers and leaving carriers with COLR obligations to serve high-cost areas with low-value customers.

The Commission should also adopt rules that apply to carriers that provide services in high cost areas through a combination of resale and facilities. Such rules should provide for an appropriate sharing of universal service support among the wholesale and retail carrier.

¹³ Recommended Decision at Para. 161.

Finally, the Commission should adopt specific requirements regarding wireless carriers since there is no dedicated "loop" for wireless service, and since a wireless carrier could claim it was providing universal service to a customer even if the customer did not use, or own, a mobile phone. CWA supports NYNEX's position that a wireless carrier receive universal service support only if it is the sole provider of service to a customer and the customer designates the wireless provider as its primary carrier and pays non-subsidized rates to the wireline carrier.¹⁴

IV. Funding Mechanism

A. The Joint Board's Recommendation that Contributions to Universal Service Support Be Based on Gross Income Net of Payments to other Carriers is Not Competitively Neutral.

The Joint Board recommends that contributions to universal service support be based on a carrier's gross telecommunications revenues net of payments to other carriers.¹⁵ CWA has become convinced that a better approach is to base contributions on retail revenues.

Contributions to universal service must be equitable and nondiscriminatory. However, the Joint Board's recommended approach would favor resellers over facilities-based carriers. Based on the Joint Board's recommended mechanism, a carrier that relies upon another carrier's network to provide service would be allowed to deduct payments to other carriers. A facilities-based carrier is not allowed to deduct the cost of their inputs. Thus, the Joint Board's recommendation favors carriers that rely upon another carrier's network to provide service.

¹⁴ NYNEX Comments on Joint Board Recommendation, Dec. 19, 1996, p. 5-6.

¹⁵ Recommended Decision, para 807.

Furthermore, the Joint Board's recommended approach creates a disincentive against deploying facilities. A competitive local exchange carrier that substitutes its own facilities for those previously provided through resale will experience an increase in its universal service contribution, even though there has been no commensurate increase in revenues.

The Commission's pricing of unbundled network elements in the Interconnection Order already provides cost advantages to resellers over facilities-based carriers. The Commission should not provide further advantage to resellers over facilities-based carriers in this proceeding.

Therefore, CWA believes that contributions to universal service support should be based on retail revenues. Such an assessment is administratively simple, equitable and nondiscriminatory, and will result in a fund that is specific, predictable, and sufficient.

B. Both Inter- and Intrastate Retail Revenues Should be Assessed to Fund Universal Service.

CWA supports the Joint Board's recommendation that contributions for support for schools and libraries be based on both inter- and intrastate revenues, and believes that the same funding base should apply to contributions to high cost support.

Assessment of inter- and intrastate revenues is necessary to ensure that support is "sufficient" to cover the four areas the Act and the Joint Board specify for universal service support: high cost areas, low-income households, schools and libraries, and rural health care providers. The size of

the universal service fund must be sufficient to replace the implicit subsidies that previously supported universal service. Some commentators note that current implicit subsidies may total as much as \$20 billion.¹⁶ The universal service fund will not be sufficient to replace the revenues lost from implicit subsidies, and add support for schools, libraries, and rural health providers, if intra-state revenues are excluded from the funding base.

C. Internet Service Providers that Provide Telecommunications Services Should Be Required to Contribute to Support of Universal Service.

Section 254(d) of the Act requires “every telecommunications carrier that provides interstate telecommunications services” to contribute to universal service support. Internet Service Providers (ISPs) that provide voice telephony should be required to contribute on an equitable basis to support universal service.

Past Commission action to exempt ISPs from payment of access charges served to nurture the development and growth of this dynamic industry. However, today many ISPs have matured into firms of substantial size and stability and should be subject to regulatory requirements to share the wealth they have generated with consumers in the form of universal service support.

¹⁶ See, for example, Calvin S. Monson and Jeffrey H. Rohlfs, “The \$20 Billion Impact of Local Competition in Telecommunications,” July 16, 1993.

V. Method for Determining High Cost Support

A. High Cost Support Should Be Calculated Based on Actual Costs.

The Joint Board recommends that the amount of high cost support be calculated by determining the difference between the cost of service and a national revenue benchmark. The Joint Board recommends that a forward-looking proxy model be used to determine the cost of universal service support. CWA believes that high cost support should be calculated based on actual costs.

There are several problems with a forward-looking proxy model as a mechanism to determine cost. First, a forward-looking model is hypothetical. It is based on engineering assumptions that assume the most modern and efficient deployment of technology. But networks are not built according to hypothetical engineering models using tomorrow's technology. They are built piecemeal, based on the technology and demand forecasts available at the time that they are built. This results in actual costs that are higher than those derived from a forward-looking proxy model.

Second, use of a forward-looking proxy model to determine universal support will discourage carriers from making network investment in high cost areas. Because telecommunications is a declining cost industry, investments made in today's technology will not be recoverable using a model based on forward-looking costs. As a result, carriers will be discouraged from making investments and building facilities in high cost areas because universal service support will never be sufficient to recover actual costs.

Third, forward-looking models ignore past and current costs imposed on carriers by regulatory obligations. Incumbent carriers have and will continue to incur costs to serve high cost areas based on carrier of last resort and other universal service obligations. Universal service support must be sufficient to enable carriers to recover those actual costs.

Public policy requires that carriers be compensated for these investments. If the cost of support is set too low, carriers are likely to attempt to recover revenues either through rate increases, thereby further undermining universal service, or by cutting back on variable costs, including labor and investment expense. The result will be a deterioration in service quality as carriers reduce investment in maintenance, repair, and network improvements and as employment drops below levels necessary to provide quality service to customers.

Fourth, forward-looking models raise specific questions regarding the modeling of labor costs. Collective bargaining agreements currently cover almost the entire non-management workforce in the local exchange industry. Any proxy cost model that does not base labor expenses on the actual cost of labor in the local exchange, including realistic productivity and inflation factors, would serve to undermine legally binding collective bargaining agreements and existing labor standards. Certainly, this is not the intent of the Commission in this proceeding.

Finally, incumbent carriers have incurred past obligations to meet carrier of last resort and universal service obligations that they cannot recover in a competitive environment. The

Commission should adopt a transition mechanism, either in this proceeding or in the access reform proceeding, to enable incumbent LECs to recover these embedded costs.

B. The Revenue Benchmark Should Be Based on Revenues from Services Included in the Universal Service Package

CWA believes that only services eligible for universal service support should be included in the revenues used to calculate the nationwide revenue benchmark. The nationwide revenue benchmark is intended to serve as a measure of affordability. Including discretionary and access services raises the revenue benchmark to a level that exceeds a reasonable approximation of affordability, which according to a recent study, falls in the range of .7 to 1 percent of household income.¹⁷ The Commission should adopt a revenue benchmark that approximates this level.

C. The Size of Service Areas Should be Small in Scope

CWA concurs with the Joint Board's recommendation that the states be encouraged to designate services areas that "are of sufficiently small geographic scope to permit efficient targeting of high cost support..."¹⁸ This will ensure that consumers in high-cost areas continue to receive high-quality service and the benefits of network investment.

¹⁷ Mark Cooper, "Universal Service: A Historical Perspective and Policies for the Twenty-First Century," Benton Foundation and Consumer Federation of America, pp 12-13. Telephone penetration reaches around 90 percent with rates at one percent of household income and reaches 99 percent with rates at .7 percent of household income.

¹⁸ Recommended Decision at Para. 175.

VI. Subscriber Line Charge Should Not be Increased

CWA supports the Joint Board recommendation that the Subscriber Line Charge not be increased. Affordability of telephone service will not be enhanced by increases in Federal imposts. This is contrary to the clear intent of the Congress for affordable service.¹⁹

VII. The Joint Board's Recommendations for Discounts to Schools and Libraries Should be Supported

CWA's definition of universal service envisions in the future affordable, quality access to advanced telecommunications and information services for all residential and business customers, regardless of geography or income level. In the short-term, this goal can be realized through the Joint Board's recommendations concerning discounts to schools and libraries. Furthermore, stimulating network modernization and user demand for advanced telecommunication and information services by making schools and libraries centers for community access will over time reduce the marginal costs of these services for all users.

CWA supports the inclusion of inside wiring in the package of services for which schools and libraries can receive universal service discounts. Without this support, many schools, particularly those in jurisdictions with many low-income students, will not be able to afford the upgrades to inside wiring necessary for network connection.

¹⁹ U.S.C. Section 254(b)(1).

However, CWA believes that the Commission should modify the Joint Board's recommendation regarding Internet Service Providers (ISPs) and online service providers. Such support should be available only if Internet Service Providers or online service providers contribute to the universal service support funding mechanism in the same manner as other telecommunication carriers.

The Joint Board cites comments that ISPs "rely to a large degree on existing telecommunications carriers for the underlying transport facilities that constitute the Internet's backbone, as well as for local loop connections to individual Internet servers and users."²⁰

CWA believes that if ISPs are considered telecommunications carriers for purpose of universal support to schools and libraries, then ISPs should also be considered telecommunications carriers for purpose of support of universal service funding.

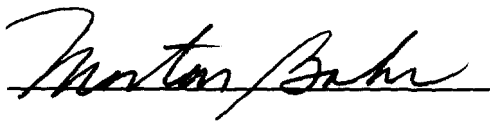
VIII. Conclusion

The universal availability of high quality telecommunications services at an affordable price should be the standard by which we judge telecommunications policy in a competitive framework. The challenge before the Commission is to build upon the Joint Board's recommendations to ensure that the mandates of the 1996 Act to provide quality services at affordable rates; access to advanced services in all regions of the country; equitable,

²⁰ Recommended Decision at Para. 462.

nondiscriminatory, and predictable support mechanisms; and access to advanced telecommunications services for schools, libraries, and non-profit health care providers are met.

Respectfully submitted,

A handwritten signature in cursive script, reading "Morton Bahr", written over a horizontal line.

Communications Workers of America

Morton Bahr

President

January 10, 1997